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**THIRD SUPPLEMENTAL  
INDENTURE OF TRUST**

**Dated as of October 1, 2010**

**By and Between the**

**CITY OF SAN JOSE FINANCING AUTHORITY**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$60,310,000  
Initial Principal Amount  
City of San José Financing Authority  
Lease Revenue Bonds, Series 2008A  
(Civic Center Refunding Project)**

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### THIRD SUPPLEMENTAL INDENTURE OF TRUST

THIS THIRD SUPPLEMENTAL INDENTURE OF TRUST, dated as of October 1, 2010 (the "Third Supplemental Indenture of Trust"), is by and between the CITY OF SAN JOSE FINANCING AUTHORITY (the "Authority"), a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Authority"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

#### WITNESSETH:

**WHEREAS**, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Agency"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to the Act to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City and the Agency; and

**WHEREAS**, the Authority has heretofore determined to adopt and implement a program under which the Authority will provide financing and refinancing for certain public capital improvements for the City; and

**WHEREAS**, on August 14, 2008, pursuant to the Act and an Indenture of Trust dated as of November 1, 2002 (the "Original Indenture"), between the Authority and the Trustee, as supplemented and amended by a First Supplemental Indenture of Trust dated as May 1, 2006 (the "First Supplemental Indenture"), and as further supplemented and amended by a Second Supplemental Indenture of Trust dated as of August 1, 2008 (the "Second Supplemental Indenture" and, together with the Original Indenture and the First Supplemental Indenture, the "Indenture"), the Authority issued its \$60,310,000 City of San José Financing Authority Lease Revenue Bonds, Series 2008A (Civic Center Refunding Project)" (the "Series 2008A Bonds") in order to refinance, in part, the City's acquisition and construction of its civic center by refunding the Authority's Series 2002C Bonds (as defined in the Original Indenture); and

**WHEREAS**, concurrently with the delivery of the Series 2008A Bonds, the Authority and the City caused to be delivered to the Trustee an irrevocable direct-pay letter of credit (as more fully defined in the Original Indenture, the "Credit Facility") issued severally, but not jointly, by The Bank of Nova Scotia, acting through its New York Agency, and the California State Teachers' Retirement System (as more fully defined in the Second Supplemental Indenture, the "Credit Provider") in order to provide support for the payment of the principal of and interest on the Bonds, and the purchase price of the Series 2008A Bonds upon the optional or mandatory tender thereof; and

**WHEREAS**, the Authority and the City now desire to deliver to the Trustee an irrevocable direct-pay letter of credit issued by Union Bank, N.A., in substitution for the Credit Facility initially delivered by the Credit Provider; and

**WHEREAS**, pursuant to Section 9.01(b)(viii) of the Original Indenture, the Authority now desires to supplement and amend the Indenture, in order to revise certain provisions thereof to allow for the delivery of an Alternate Credit Facility on any date during a Daily Rate Period and a Weekly Rate Period (as such terms are defined in the Indenture); and

**WHEREAS**, the execution and delivery of this Third Supplemental Indenture of Trust have been duly approved and authorized by resolution of the Governing Board of the Authority;

**NOW, THEREFORE**, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

## AGREEMENT

**Section 1. Additional Definitions.** The following defined term is added to Section 1.01 of the Original Indenture and Section 16.01 of the Second Supplemental Indenture, and made a part thereof:

"Third Supplemental Indenture of Trust" means the Third Supplemental Indenture of Trust dated as of October 1, 2010 between the Authority and the Trustee.

**Section 2. Amended Definitions.** The following defined term set forth in Section 16.01 of the Second Supplemental Indenture (amending the definition set forth in Section 1.01 of the Original Indenture) is hereby revised as follows:

"Interest Payment Date" means, from after the date of issuance of the Series 2008A Bonds, with respect to a Series of Bonds other than Dutch Auction Securities, (i) when used with respect to a Series of Bonds bearing interest at a Daily Rate, a Weekly Rate or a Monthly Rate, the first Business Day of each month, the maturity date thereof, and, with respect to a Series of Bonds bearing interest at a Daily Rate or a Weekly Rate, any date on which the Series 2008A Bonds are subject to mandatory tender for purchase pursuant to Section 18.02(d)(ii), Section 18.02(d)(iii) or Section 18.02(d)(iv) hereof; (ii) when used with respect to a Series of Bonds bearing interest at a Flexible Rate, the Business Day following each Rate Period and the maturity date thereof; (iii) when used with respect to a Series of Bonds bearing interest at a Semiannual Rate, a Long Rate or a Fixed Rate, including the Series 2002B Bonds and Series 2006A Bonds, June 1 and December 1 of each year, commencing, on the first June 1 or December 1 which is at least two months after the applicable Conversion Date, if any, provided that such dates may be changed by the Authority upon any conversion to a Semiannual Rate, a Long Rate or a Fixed Rate, if the Authority provides to the Trustee an Opinion of Bond Counsel to the effect that such change, in and of itself, does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2008A Bonds; and (iv) when used with respect to Bank Bonds, any date on which any interest on the Bank Bonds is due under the Series 2008A Credit Agreement.

**Section 3. Amendment of Section 20.03 of the Second Supplemental Indenture.** Section 20.03 of the Second Supplemental Indenture is hereby amended in its entirety to read as follows:

The Authority may, at its option, provide for the delivery to the Trustee of an Alternate Series 2008A Credit Facility for the Series 2008A Bonds in substitution for all or a portion of the Series 2008A Credit Facility or Liquidity Facility then in effect for such Series 2008A Bonds (a) at any time with respect to any Bonds bearing interest at a Weekly Rate or a Daily Rate, (b) on any Conversion Date, (c) on any Interest Payment Date with respect to a Series of Bonds bearing interest at a Monthly Rate and (d) on any date on which all Bonds bearing interest at a Long Rate are permitted to be optionally redeemed pursuant to Section 18.01(a). The Authority shall give written notice of its

intention to exercise such option to the Trustee, the Series 2008A Liquidity Provider and the Series 2008A Credit Provider at least 45 days before the proposed effective date of such Alternate Series 2008A Credit Facility. On or before the date of the delivery of an Alternate Series 2008A Credit Facility to the Trustee, the Authority shall furnish to the Trustee (i) an Opinion of Bond Counsel substantially to the effect that the delivery of such Alternate Series 2008A Credit Facility to the Trustee is authorized under the Indenture and complies with the terms of the Indenture and, with respect to the delivery of an Alternate Series 2008A Credit Facility for the Series 2008A Bonds, will not, in and of itself, result in the inclusion of interest on the Series 2008A Bonds in gross income for federal income tax purposes, (ii) an Opinion of Bond Counsel addressed to the Trustee stating that the delivery of such Alternate Series 2008A Credit Facility will not adversely affect the exemption of such Series 2008A Bonds from registration under the Securities Act of 1933, as amended, or that such Series 2008A Bonds have been so registered; (iii) an opinion of counsel to the Series 2008A Credit Provider or Liquidity Facility addressed to the Trustee to substantially the same effect as the opinion delivered by counsel to the Series 2008A Credit Provider or Liquidity Facility in connection with the delivery of the Series 2008A Credit Facility or Liquidity Facility being replaced; and (iv) the written consent of the provider of the Series 2008A Liquidity Facility or the Series 2008A Credit Facility, as the case may be, not being replaced if the Alternate Series 2008A Credit Facility will not be in substitution for both the Series 2008A Liquidity Facility and the Series 2008A Credit Facility. Such substitution may be made only if the existing Series 2008A Liquidity Facility may be drawn upon to pay the Purchase Price of the Series 2008A Bonds that will be tendered, and the draw to pay the Purchase Price of the Series 2008A Bonds being tendered shall be made on such existing Series 2008A Liquidity Facility. Not fewer than 10 days prior to the proposed mandatory tender date, the Trustee shall mail (by first class mail) a written notice thereof to the Owners of such Series 2008A Bonds at their addresses as they appear on the registration books of the Trustee on the day on which notice is received by the Trustee from the Authority as provided above. Such notice shall set forth the information required by Section 18.02(j).

**Section 4. Amendment of Section 21.06 of the Second Supplemental Indenture.**

Section 21.06 of the Second Supplemental Indenture is hereby amended in its entirety to read as follows:

(a) All notices or communications herein required or permitted to be given to the Authority, the Trustee, the Remarketing Agent or the Credit Provider shall be in writing and shall be deemed to have been sufficiently given or served for all purposes by being delivered or sent by telecopy or by being deposited, postage prepaid, registered or certified mail, addressed as set forth below. The City shall be sent a copy of all notices delivered under this Indenture in the same manner it is delivered to the other parties listed below:

If to the Authority:

City of San José Financing Authority  
c/o City of San José  
Debt Management  
Finance  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor

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Council/SJFA Agenda 10-5-10  
Item Number: 2(b)

**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

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San José, California 95113-1905

If to the Trustee:  
or Tender Agent

Wells Fargo Bank, National Association  
707 Wilshire Blvd., 17th Floor  
Los Angeles, California 90017  
Attention: Corporate Trust Department

and

Wells Fargo Bank Minnesota, N.A.  
Corporate Trust Operations  
N9303-121  
6th & Marquette Avenue  
Minneapolis, Minnesota 55479

If to the City:

City of San José  
Debt Management  
Finance  
City of San José  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, California 95113-1905

If to the Series 2008A  
Remarketing Agent:

Goldman, Sachs & Co.  
200 West Street, 6th Floor  
New York, New York 10282  
Attention: Municipal Bond Department

If to the Series 2008A  
Credit Provider:

Union Bank, N.A.  
445 South Figueroa Street, G08-268  
Los Angeles, California 90071  
Attention: Public Finance Unit

The Series 2008A Liquidity Provider, if different from the Series 2008A Credit Provider, shall be sent a copy of all notices and other documents delivered under the Indenture to the Series 2008A Credit Provider.

(b) The Trustee shall give, as soon as practicable, written notice to any Rating Agency then rating the Series 2008A Bonds if (i) a successor Trustee, Tender Agent, or Remarketing Agent is appointed hereunder, (ii) an Alternate Series 2008A Credit Facility (including a substitute Liquidity Facility) is delivered with respect to any of the Series 2008A Bonds, (iii) the Termination Date or the termination or expiration date of any Credit Facility, Liquidity Facility or Alternate Series 2008A Credit Facility (including a substitute Liquidity Facility) is extended, (iv) any Credit Facility, Liquidity Facility or Alternate Series 2008A Credit Facility (including a substitute Liquidity Facility) expires, (v) a Conversion Date occurs, (vi) if the Indenture or the Project Lease is amended or supplemented in any material manner, (vii) if the Series 2008A Bonds are

paid and the Indenture defeased pursuant to Section 10.01, (viii) if the Series 2008A Bonds are accelerated pursuant to Section 7.02, (ix) if the Credit Facility (including any Liquidity Facility) or the documentation relating thereto is amended, modified or supplemented, (x) if Additional Bonds are issued, (xi) if the Series 2008A Bonds are redeemed in whole or in part pursuant to Section 18.01, or (xii) if the Series 2008A Bonds are subject to mandatory tender pursuant to Section 18.02(d) hereof, provided that the Trustee shall incur no liability for failure to give any such notice.

Any notice to the Rating Agencies shall be deemed to have been sufficiently given or served for all purposes by being delivered or sent by confirmed facsimile transmission or by being deposited, postage prepaid, in a post office letter box, addressed, to S&P at 55 Water Street, New York, New York 10041, Attention: Public Finance, e-mail: [pubfin\\_structured@standardandpoors.com](mailto:pubfin_structured@standardandpoors.com); to Moody's at 99 Church Street, New York, New York 10007, Attention: Public Finance; and to Fitch at One State Street Plaza, New York, New York 10004, Attention: Public Finance (or such other address or addresses as may have been filed in writing by a Rating Agency or Rating Agencies with the Trustee).

**Section 5. Effectiveness.** Except as otherwise amended hereby, the Original Indenture, the First Supplemental Indenture and the Second Supplemental Indenture shall remain in full force and effect. This Third Supplemental Indenture of Trust, and the amendments to the Original Indenture, the First Supplemental Indenture and the Second Supplemental Indenture contained herein, shall become effective on October \_\_, 2010.

**Section 6. Counterparts.** This Third Supplemental Indenture of Trust may be executed in counterparts.



IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture of Trust to be duly executed by their officers duly authorized as of the date first above written.

CITY OF SAN JOSE FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Julia H. Cooper,  
Assistant Director of Finance  
of the City of San José

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:  
Richard Doyle  
City Attorney

By: \_\_\_\_\_  
Chief Deputy City Attorney

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as trustee

By: \_\_\_\_\_  
Authorized Officer